WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.08.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.37 of 2006

Premnazeer ... Petitioner

vs.

1. The State of Tamilnadu rep.
by the Secretary to the Government,
Public (SC) Department,
Fort St. George, Chennai-600 009.

2. The Union of India, rep.
by the Secretary to the Government,
Ministry of Finance, Department
of Revenue,
(COFEPOSA - Unit) New Delhi.

3. The Superintendent of Central
Prison,
Central Prison, Chennai-600 003. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a writ of habeas corpus to call for the records relating to the detention order in G.O.No.S.R.1/1181-2/2005 dated 29.12.2005 passed by the first respondent, quash the same, direct the respondent to produce the body of the person of the detenu namely Mohamed Khan, son of Jahir Hussain, before Court, now detained under Sec.3(1)(i) of the COFEPOSA Act in the Central Prison, Chennai, and set him at liberty.

For Petitioner : Mr. S.Palanikumar.

For R-1 & R-3 : Mr.M.Babu Muthu Meeran,
Addl. Public Prosecutor

For R-2 : Mr.P.Kumaresan, Addl. Central
Govt. Standing Counsel.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

O R D E R

P. SATHASIVAM, J.

The petitioner herein challenges the impugned order of detention, dated 29.12.2005, detaining his brother by name Mohamed Khan under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA Act).

2. Heard Mr.S.Palanikumar, learned counsel for the petitioner; Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for R-1 and R-3; and Mr.P.Kumaresan, learned Additional Central Government Standing Counsel for R-2.

3. Brief and background facts which led to the detention of the detenu are as follows:-

On 21/22.12.2005, detenu Moahmed Khan, on his arrival at Anna International Airport, Chennai, from Singapore, was intercepted by the officers attached to the DRI Department, Chennai, at Customs table No.9 at the arrival hall of the Airport along with one hand baggage and 2 checked in baggages. The detenu declared the contents as electronic goods and the value as Rs.1,00,000/-. On examination, the Officers found the baggages to contain Battery, Camera and Projector and assessed the value of the goods as Rs.7,19,550/- (CIF) and seized the same under mahazar dated 22.12.2005.

The detenu gave a statement that he studied upto 4th Standard, that he knows only Tamil and that he brought the electronic goods given by one Nizam of Singapore with instruction to hand over the same to one Jamal, for which assignment, he would be paid a sum of Rs.5,000/-.

Since the detenu mis-declared the value and quantity of the goods, a case was registered against him under the Customs Act. He was arrested on 22.12.2005 and remanded to judicial custody on the orders of the Court till 05.01.2006. The detenu's father was intimated of the arrest and remand by way of Telegram. The detenu's house was searched, however, no incriminating material was recovered.

The detenu sent a retraction letter to the Sponsoring authority, for which, a reply was sent by the said authority. On 29.12.2005, the Detaining Authority passed the detention order and the papers were supplied to the detenu on 31.12.2005.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

4. Learned counsel appearing for the petitioner, at the foremost, submitted that though the seized goods were of lesser value, the officers ascribed excessive value to the same. He further contended that though this aspect was specifically stated in the representation, the Sponsoring Authority did not take any positive effort to re-value the goods seized under the mahazar.

Learned counsel, by pointing out that the Detaining Authority, while arriving at the subjective satisfaction, relied upon the reply of the DRI to the effect that valuation adopted was in consultation with the Airport Customs Officers; would submit that when the detenu made a specific request to apprise him of the mode adopted to calculate the value of the goods seized by supplying him the necessary documents, the Detaining Authority, considering the vitality of the request/claim, should have supplied those materials, and failure to do so would dismantle the edifice of the detention order.

5. On the other hand, learned Additional Public Prosecutor submitted that all the relevant and relied upon materials were supplied to the detenu and there is no procedural error in passing the order of detention, accordingly, he prayed for dismissal of the Petition.

6. Inasmuch as the two contentions raised by the learned counsel for the petitioner emanate from the same theme, we decide the merit or otherwise of both the submissions together.

7. Since the detenu had declared the goods brought in the baggages as Rs.1,00,000/- and the Department valued the same as Rs.7,19,550/-, the mode of valuation is the relevant factor. Page No.1 of the Paper Book supplied to the detenu contains copy of the mahazar dated 21/22.12.2005. Annexure to the same refers to various items of goods brought in by the detenu and the value in Rupees. The grand total value of the items is given as Rs.7,19,550/-. It is the specific case of the detenu that, on his behalf, a representation along with earlier adjudication order was sent to the officers of the DRI stating that the goods are of lesser value, yet, the same have been excessively over-valued. In paragraph No.x of the grounds of detention, the Detaining Authority has referred to the representation dated 26.12.2005, wherein, the detenu has specifically alleged that there was excessive valuation of the goods and that he was forced to make the statement. No doubt, a reply was sent by the DRI on 28.12.2005 denying his allegation. In the reply, it is stated that the value of the goods had been adopted by the officers in consultation with the Airport Customs Officers. As rightly pointed out by the learned counsel for the petitioner, considering

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

the statement of the Detaining Authority regarding valuation and valuation being the relevant factor for arrest and detaining the detenu under the COFEPOSA Act, it is but proper for the authority to have furnished the details sought for. It is rather surprising that nowhere in the detention order, any such detail has been furnished. We have already referred to the Annexure to the mahazar, which only specifies the quantity of goods and the value in Rupees.

8. It is relevant to note that, in the representation dated 26.12.2005, the detenu has specifically stated that the statement was made under coercion. By pointing out that the value fixed for the goods is excessive, he requested the authorities that a revised valuation may be made based on the valuation being made for similar goods at the Airport. The detenu has also prayed for a copy of the order or proceeding, fixing valuation in respect of similar goods seized at the Airport. In the reply/rejection letter, dated 17.01.2006, the State Government has bluntly stated that the valuation was made by the Customs Department as per the guidelines that were being followed. Though in the same paragraph (para No.3), it is stated that all the details including mahazars were supplied to the detenu, a perusal in that background would show that no such details as sought for by the detenu are available. Thus, it is clear that the relevant details were neither made available in the detention order nor supplied to the detenu even after the specific request made in the representation.

9. In the decision reported in 2005 MLJ (Cri.) 672 (Valiani Mohd. Shafi v. State of Tamil Nadu), while considering similar claim, the Division Bench has held thus:-

> " 6. ..... In such circumstances and in the light of the said dispute, having relied on the information/statement furnished by the Joint Commissioner of Customs stating that the value has been adopted in conformity with the valuation procedures as envisaged under Rule 8 of the Rules, it is clear that the detaining authority has relied on the information furnished by the said officer namely, the Joint commissioner of Customs. Accordingly, it is, but, proper to supply a copy of the said decision to the detenu in order to make an effective representation with regard to his detention. Failure to supply the same vitiates the detention order. "

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

10. In the case on hand, though in the grounds of detention, it is specifically stated that,

> '... the valuation adopted by the officers was in consultation with the Airport Customs Officers; ...',

the relevant details were neither mentioned in the grounds of detention nor supplied to the detenu even after the specific request made in the representation. As observed in the said decision, failure to supply the same vitiates the detention order.

11. In the decision reported in 1992 (2) Crimes 43 (Daya Shankar Singh v. Union of India), a Division Bench of the Allahabad High Court has held that in preventive detention cases, if a detenu asks for some particulars, then an obligation is cast on the Detaining Authority to inform the detenu whether such material is being supplied to him and if not, then on what ground. It was observed that this was the minimum guarantee which was guaranteed to a person under Article 22(5) of our Constitution. Consequently, the continued detention of the detenu was rendered illegal.

12. In HCP No.3 of 2006, order dated 05.07.2006, the Division Bench accepted similar argument and quashed the detention order.

13. Even though on 26.12.2005 itself, the detenu, by way of letter, retracted his earlier statement and also asserted that confession was obtained by coercion at the Airport, the said relevant aspect/retraction of the detenu has not been considered by the Detaining Authority. In para No.x of the grounds of detention, the Detaining Authority, after referring to the stand of the detenu that he was threatened not to give any complaint before the Magistrate, stated that the values mentioned in the mahazar were prepared in the presence of independent witnesses. In this regard, it is useful to refer to the Judgment of the Supreme Court reported in 1992 AIR SCW 2062 (K.T.M.S. Mohd. v. Union of India). While considering the admissibility and evidentiary value of the statement recorded by the Enforcement Authority and the retraction by the detenu as well as passing of the detention order, the Supreme Court has held as follows:-

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

> " 32. ... It thus boils down that the authority or any Court intending to act upon the inculpatory statement as a voluntary one should apply its mind to the retraction and reject the same in writing. It is only on this principle of law, this Court in several decisions has ruled that even in passing a detention order on the basis of an inculpatory statement of a detenu who has violated the provisions of the FERA or the Customs Act etc. the detaining authority should consider the subsequent retraction and record its opinion before accepting the inculpatory statement lest the order will be vitiated. ..."

The above decision makes it clear that mere reference to retraction is not sufficient and that it is incumbent on the part of the Detaining Authority to record his opinion before accepting the inculpatory statement, otherwise, the order will be vitiated.

14. In the earlier part of our Order, we referred to the specific request made by the detenu to supply him the details of the orders passed by the authority in respect of similar goods seized at the Airport. Unfortunately, in spite of the same, a general and bald reply had been sent stating that the valuation was adopted as per the guidelines of the Customs Department. Courts have held that disposal of the representation of the detenu is not a mere formality and the same has to be considered with an unbiased mind. It was also held that when several particulars are furnished, it is but proper for the Government to verify those details from the officers concerned and order has to be passed after due consideration (vide John Martin vs. State of West Bengal-AIR 1975 SC 775; and A.C. Razia vs. Government of Kerala-2004 SCC (Crl.) 618).

15. It is useful to refer to the decision of the Supreme Court reported in AIR 1991 SC 1375 (K.Satyanarayan Subudhi vs. Union of India). In that case, apart from the infirmity in the order of detention, Their Lordships have also noted that the detenu is under detention for over eight months and that the order of detention is for a period of one year. Considering this aspect along with the other aspect mentioned in the earlier paragraphs, it was concluded that it is just and proper to quash the order of detention. In the case on hand, the detention order was passed on 29.12.2005 and, taking note of the observation of the Supreme Court in the above referred cases and in view of the reasons mentioned above, we hold that the detention order is liable to be quashed.

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Consequently, the Habeas Corpus Petition is allowed and the impugned order of detention is quashed. The detenu is directed to be set at liberty forthwith from custody unless he is required in connection with any other case or cause.

JI.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Govt.,
Public (SC) Department,
Fort St. George, Chennai-9.

2. The Secretary to Govt.,
Ministry of Finance, Department of Revenue,
COFEPOSA Unit, New Delhi 110 001.

3. The Superintendent, Central Prison,
Chennai.
(in duplicate for communication to the Detenue)

4. The Public Prosecutor, High Court, Madras.

5. The Joint Secretary to Government,
Pulic (Law and Order) Fort St George,
Chennai 9.

6. The Sub Assistant Registrar,
COFEPOSA Section,
High Court, Madras.

+ 1 cc to Mr. S. Palanikumar, Advocate SR No. 37597

AKM(CO)
SR/29.8.2006

Order
in
HCP No.37 of 2006.

https://hcservices.ecourts.gov.in/hcservices/